

W

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)
)
Toll Free Access Codes)

CC Docket No. 95-155

DOCKET FILE COPY ORIGINAL

NOV 1 1995

COMMENTS OF ENTERPRISE RENT-A-CAR, INC.

Enterprise Rent-A-Car, Inc. ("Enterprise"), by its undersigned counsel, hereby submits comments in response to the Notice of Proposed Rulemaking ("Notice") released October 5, 1995 in the above-captioned docket.^{1/} Enterprise is a leading provider of automotive rental services. As discussed below, Enterprise depends heavily upon customer recognition and recollection of its unique 800 toll free numbers. Accordingly, Enterprise supports the Federal Communications Commission's ("FCC" or "Commission") proposal to promulgate rules that provide current holders of 800 "vanity" numbers with reasonable protections as equivalent 888 and other toll free codes become available.

Headquartered in St. Louis, Missouri, Enterprise employs approximately 25,000 employees nationwide and serves individual consumers, small-to-medium size businesses, as well as large corporations. Enterprise is widely known for its high quality service, affordable rates and efficient and convenient locations. Enterprise has committed substantial resources to nationwide advertising prominently featuring the company's unique toll free access numbers. These numbers provide an

^{1/} *In the Matter of Toll Free Service Access Codes*, Notice of Proposed Rulemaking, CC Docket No. 95-155 (released October 5, 1995) ("Notice").

No. of Copies rec'd
List ABCDE

essential link between the company and its customers. Accordingly, Enterprise and its business will be affected by the rules adopted in this proceeding.

INTRODUCTION

The Commission proposes to develop rules and procedures governing the “efficient, fair and orderly” assignment of new toll free numbers.^{2/} In particular, the Commission notes that significant competitive issues are implicated by the assignment of 888 vanity numbers,^{3/} when the holders of the equivalent 800 numbers have “invested substantial resources in advertising the number and establishing a reputation for [the 800 number].”^{4/} Specifically, the Commission recognizes that the assignment of new 888 toll free numbers may have a financial and competitive impact upon those companies that will need to reserve the equivalent 888 vanity number in light of the high visibility and consumer recognition of their existing 800 numbers and the confusion that may ensue if a competing company reserves the equivalent 888 number. Accordingly, the Commission seeks comments on two proposals to address the reservation and assignment of 888 vanity numbers:

- 1) An 800 number holder would have the right of first refusal to receive the equivalent 888 number. The Commission proposes a one-time fee which may be determined by competitive bidding; or

^{2/} Notice at para. 12.

^{3/} Enterprise uses the term “vanity” number in these comments as defined in the Commission’s Notice to include not only numbers that spell a name or word of value to the number holder, but also numbers in which holder has a particular interest, “be it economic, commercial or other use.” Notice at para. 35.

^{4/} Id.

- 2) A prohibition on the assignment of an equivalent 888 code (and subsequent toll free codes) to a competitor of the 800 number holder.

Enterprise applauds the Commission's efforts to develop an efficient and equitable system for introducing new toll free codes. Enterprise concurs with the Commission that it is important to prevent toll free code warehousing and hoarding. Enterprise also shares the Commission's view that, although toll free numbers are a public resource and neither subscribers nor carriers "own" the numbers, the public interest requires that the Commission develop rules that will recognize an existing user's investment in its current vanity numbers. As discussed below, it is critical to Enterprise and similar businesses that the rules governing the introduction of new toll free codes prevent customer confusion, lost business and lost investment to incumbent 800 number users. Such confusion and economic loss will surely result if the Commission does not provide incumbent 800 number users with prior rights to equivalent toll free codes and it permits competitors to obtain the equivalent toll free codes without objection. Accordingly, Enterprise supports the alternative vanity number approaches outlined in the Notice.

I. Existing Holders of 800 Vanity Numbers Should Have a Right of First Refusal to Equivalent 888 and Other Toll Free Numbers

Enterprise actively uses and promotes a group of toll free telephone numbers. Some of these numbers are vanity numbers as defined by the Commission, including 800-RENT-A-CAR, 800-VAN-4WORK and 800-325-8007 (the Enterprise national reservation number). Enterprise has already made considerable investment in these numbers and expects to expand that investment in

the future. Because these numbers are of significant value to Enterprise, the company has sought federal trademark registration for 800-RENT-A-CAR and 800-VAN-4WORK.

As toll free telephone numbers become integrated into a company's public persona, the need for protection against "infringing" uses of confusingly similar numbers becomes more important. With that need in mind, Enterprise urges the Commission to grant the holders of existing toll free 800-prefixed numbers -- including vanity numbers that spell a name or word and vanity numbers in which the 800 holder has an economic or commercial interest -- a right of first refusal on any equivalent 888 toll free code and subsequent toll free numbers (e.g., 877, 866, etc.). This proposal is a reasonable approach to permitting the efficient introduction of new toll free codes without causing serious harm to American businesses that have committed significant resources the use and promotion of 800 vanity numbers.

II. The Commission's Rules Should Preserve the Value of 800 Numbers, Prevent Warehousing and Deter Brokering of Toll Free Numbers

The Commission's Rules should provide for fair and equitable distribution of toll free numbers in a manner that protects the substantial investments of current number holders, prevents warehousing and deters "brokering" of toll free numbers. To address these concerns and implement the first right of refusal proposed above, the Commission must adopt specific rules that can be efficiently and easily administered. Enterprise supports a plan similar to the one proposed by the American Car Rental Association, whereby current toll free number holders, through their RespOrgs, may claim within a reasonable period of time (e.g., 60 days) their rights of refusal on equivalent toll free numbers. Numbers would be removed from the allocation pool and reserved provided that the

RespOrg pays an annual fee, on behalf of the subscriber, to maintain the reservation. The fee should be in an amount that will deter warehousing and “brokering” of toll free numbers. No fee would apply if the subscriber 1) places the 888 or other toll free number immediately into use and maintains such use, or 2) meets a minimum use requirement.^{5/} Under this plan, no reservation fee would be charged to subscribers whose intent to use a number is demonstrated by actual use and a legitimate business purpose for reserving the numbers. Reservation fees would be paid into an escrow account from which fees could be refunded to exempt subscribers or used to fund the administration of the SMS database. Enterprise concurs with the American Car Rental Association that these or similar provisions are necessary to prevent warehousing and brokering that would exploit the introduction of new toll free numbers and undermine the investment made in existing 800 numbers. Enterprise also urges the Commission to declare that warehousing of toll free numbers is an unreasonable practice under the Communications Act subject to complaints and/or forfeitures under Section 208 or 503(b) of the Act.

III. Companies Competing in the Same or Related Industries Should Not Be Assigned Equivalent Toll Free Codes

Enterprise shares the Commission’s view that it would be fair to prohibit companies in the same industry from gaining control of a subsequently offered toll free number that duplicates, except for the NPA, a number already in use. For example, Enterprise would be less concerned about a company in a non-automotive business being assigned a toll free number such as 888-736-7222 than

^{5/} If a subscriber’s usage fall below the threshold, in any given year, the subscriber would be required to pay the reservation fee or return the numbers to the SMS pool.

it would be if such a number were assigned to a direct or indirect competitor. In the latter case, Enterprise would anticipate significant customer confusion, and lost business to result, not to mention the potential for injury to Enterprise's reputation.

In addition, Enterprise generally supports the Commission proposal to assign 888 numbers based on industry codes provided that an 800 number holder would be able to report multiple industry codes and update its codes when appropriate. Enterprise also recommends that if this approach is adopted, the Commission should promulgate rules that provide for prompt notice to 800 number holders of a reservation request for equivalent toll free codes and provide a means by which the incumbent 800 provider could object to the requested assignment on the basis of customer confusion or other competitive harm. Such provisions would address those situations in which a party in a similar or overlapping market segment makes a reservation request for an equivalent toll free code. In the event that private parties could not reach agreement, the FCC would have jurisdiction over the dispute.

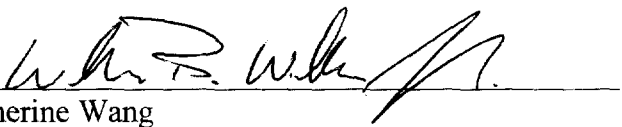
In short, Enterprise supports the Commission's proposal to adopt rules that would entrust incumbent 800 number holders with a right of first refusal under a fee reservation scheme and

prevent competitors from obtaining equivalent codes. Enterprise believes these rules are essential to protecting what Enterprise considers to be a valuable business assets.

Respectfully submitted,

ENTERPRISE RENT-A-CAR, INC.

By:


Catherine Wang
William B. Wilhelm, Jr.
Swidler & Berlin
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
(202) 424-7837

Dated: November 1, 1995